IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.907 OF 2005

Jakir Hussein Gafoor Shaikh .. ..Appellant
Versus
Smt.Vajirabi Babulal Shaikh and Ors. ..Respondents

Mr.K.Y.Mandlik for appellant

CORAM : P.V.KAKADE, J.

DATE : 30TH AUGUST, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by District Judge, Solapur dated 20.10.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Junior Division, Solapur dated 27.2.2003 dismissing the plaintiff’s suit.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff had filed the suit for mandatory injunction for getting the suit land measured and for fixation of boundary marks and removal of encroachment

and possession. The defendants contested the suit on various grounds.

. The trial court adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the defendant nos.1 to 6 had undertaken to get the suit property measured, get its boundaries fixed and apply for issue of separate property card as well as division of property to facilitate separate deposit of corporation taxes. However, it was held that the plaintiff had failed to prove that the defendant nos.1 to 12 had encroached upon the suit property towards northern side admeasuring 14.62 square meters in east-west direction and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned District Judge after hearing both the parties came to the conclusion that the efficacious remedy under Section 135 of the Maharashtra Land Revenue Code was available for the plaintiff and as such the findings recorded by the trial judge came to be confirmed and appeal was dismissed. Hence the present appeal.

4. After hearing the learned counsel for the

appellant for some time, it is transpired that the application under Section 135 of the Maharashtra Land Revenue Code in fact was made but it was dismissed on the ground that it was not in proper form. In view of this position, though it is true that the present appeal is not maintainable as the concurrent findings recorded by both the courts below appear to be just and proper. While disposing of the appeal the directions will have to be issued in order to seek ends of justice.

5. Hence the appeal stands dismissed. However, it is directed that the appellant shall have remedy under Section 135 of the Maharashtra Land Revenue Code to get the lands properly measured and fix the boundary marks and if any encroachment is found to be made on his land, get it removed according to law through the Revenue Authority under Section 135 of the Maharashtra Land Revenue Code for which purpose consent of the respondents shall not be required, nor it is contemplated under Section 135 of the Maharashtra Land Revenue Code.